Office-Supreme Court, U.S.
FILED
FEB 17 1981
ALEXANDER L. STEVAS,
CLERK

Nos. 80-939 & 80-1129

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-939

FEDERAL ELECTION COMMISSION,

Petitioner,

v.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,

Respondent.

and

No. 80-1129

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

Petitioner,

v.

DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,

Respondent.

On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The District of Columbia Circuit

REPLY BRIEF

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REPLY BRIEF

I. THIS CASE IS NOT MOOT.

Respondent Democratic Senatorial Campaign Committee ("DSCC") has argued that the instant case is "moot" because the passage of the 1980 Congressional elections renders effective relief impossible. *See* Respondent's Brief in Opposition, *Federal Election Commission* v. *Democratic Senatorial Campaign Committee*, Nos. 80-939 & 80-1129, at 7-9 [hereinafter cited as Respondent's Brief in Opposition]. This case is not moot. The Court of Appeals judgment,

which is not contingent on the occurrence of any election,[1] places Petitioner National Republican Senatorial Committee ("NRSC") in the position of violating 2 U.S.C. §441a(d)(3) which may constitute a criminal offense punishable by fine or imprisonment, *see* 2 U.S.C. §437g(d)(1)(A). The judgment of the Court of Appeals requires the Federal Election Commission ("FEC") to commence enforcement proceedings against NRSC "forthwith." *Democratic Senatorial Campaign Committee* v. *Federal Election Commission*, No. 80-274, at A19 (D.C. Cir. Oct. 9, 1980) (*per curiam*) [hereinafter cited as *DSCC* v. *FEC* with page citations to NRSC's Appendix]. With the potential imposition of criminal penalties at issue in this case, there exists a live controversy that is ripe for resolution by this Court. *See Sibron* v. *New York*, 392 U.S. 40, 57 (1968).[2]

II. SUMMARY REVERSAL OF THE JUDGMENT OF THE COURT OF APPEALS MAY BE APPROPRIATE

DSCC now concedes, for the first time, that NRSC can legally "transfer funds, in unlimited amounts, to State committees for expenditures under [§441a(d)(3)] . . . or may hire or otherwise delegate staff" for the purpose of spending §441a(d) funds "as efficiently or wisely as possible." Respondent's Brief in Opposition, at 19. As Judge Wilkey pointed

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[1] Unlike the cases cited by DSCC in which plaintiffs sought injunctive relief prior to an election or political convention, in this case NRSC may suffer criminal and civil penalties regardless of the outcome of a particular election.

[2] In fact, DSCC's administrative complaint filed with the FEC on May 9, 1980 seeks civil penalties against NRSC for alleged past violations of §441a(d)(3) with respect to the *1978* senatorial elections which took place well before this action was commenced by DSCC. *See* First General Counsel's Report, Federal Election Commission Matter Under Review 1234, at D1 (July 8, 1980) [page citation to NRSC's Appendix]; Complaint and Request for Expedited Review, Federal Election Commission Matter Under Review 1234, at 4, 8 (May 9, 1980).

out below, this is all that NRSC has done in executing the agency agreements with state committees that are at issue in this case. *DSCC* v. *FEC* at A26-A29. Since DSCC's complaint relates solely to the use of the term "agency agreement," it amounts to an elevation of "form over substance" which cannot withstand statutory or constitutional analysis. *Id.* at A26.

DSCC has requested that this Court "vacate the judgment of the Court of Appeals and instruct the District Court to dismiss the action," Respondent's Brief in Opposition, at 8, a disposition that would not involve full briefing on the merits. This Court is already familiar with the merits of the case having denied DSCC's motion to vacate the Chief Justice's temporary stay of enforcement of the Court of Appeals judgment. *See Graves* v. *Barnes*, 405 U.S. 1201, 1203 (1972). Under these circumstances, NRSC respectfully suggests that issuance of a writ of *certiorari* and summary reversal of the judgment of the Court of Appeals is appropriate. *See, e.g., Mason* v. *City of Biloxi*, 385 U.S. 370 (1966) (*per curiam*); *Ellis* v. *United States*, 356 U.S. 674 (1958) (*per curiam*); *Ewing* v. *Gardner*, 341 U.S. 321 (1951) (*per curiam*).

Respectfully submitted,

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